

MINUTES  
**HOUSE REVENUE & TAXATION COMMITTEE**

**DATE:** Wednesday, February 29, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Lake, Vice Chairman Collins, Representative(s) Barrett, Moyle, Raybould, Roberts, Schaefer, Smith(24), Wood(35), Bedke, Harwood, Barbieri, Bayer, Ellsworth, Gibbs, Killen, Burgoyne, Rusche

**ABSENT/  
EXCUSED:** None.

**GUESTS:** Tina Wilson, Bonners Ferry Chamber of Commerce; David Langhorst, Tax Commission; John Watts, Idaho Chambers of Commerce Alliance; Shawn Barigar, Twin Falls Chamber of Commerce; Lacey Ryan, Mayra Ceja, & Rob Tucker, Supervalu; Wayne Hoffman, Idaho Freedom Foundation; Alex LaBeau, Idaho Association of Commerce & Industry (IACI); Ray Amaya, KBOI 670am; Christopher Rants, Main Street Fairness Coalition; Scott Peterson, Streamlined Sales Tax; Karen Echeverria, Idaho School Boards Association (ISBA); Pam Eaton, Idaho Retailers Association; Ken Harward, Association of Idaho Cities; Suzanne Budge, SBS Associates LLC

**Chairman Lake** called the meeting to order at 8:03 am.

**MOTION:** **Rep. Harwood** made a motion to approve the minutes of the February 17, 2012 meeting. **Motion carried by voice vote.**

**H 581:** **Rep. Nessel** presented **H 581** to provide for the collection of taxes due on internet sales, which will help retain Idaho businesses. This bill does not preempt state law.

**Tina Wilson**, Bonners Ferry Chamber of Commerce, spoke **in favor** of **H 581**. Bonners Ferry has about 1,000 businesses and this will help balance the scale for main street businesses. This bill will allow Idaho to join the conversation.

**David Langhorst**, Tax Commission, spoke **in favor** of **H 581**. All of the commissioners support this concept. It is sound tax policy. It will help create the broadest tax base resulting in the lowest tax rate. In 1965, we had a 3% tax. Idaho is now at a 6% tax rate because of a shrinking tax base. This bill helps stop the shrinkage.

In response to Committee questions, **Mr. Langhorst** said the \$35M in lost taxes is a conservative estimate; it could be as high as \$100M. The University of Tennessee study listed Idaho at \$41M just for internet sales tax. It did not include telephone or mail order taxes. There are established methods for getting the use taxes paid on cars, airplanes, and other large ticket purchases. Payment of the use tax for small ticket purchases is not enforced. Non-payment of the tax is wide spread. It is not just the corporations abusing the procedure. There are really no reporting methods in place. The legislation will add our voice to the dozens of states who are ready to participate.

For 50 years, the State has had the Use tax. The seller collects the tax and remits to the State the amount paid by the purchaser. The Use tax is collected from the purchaser. Sales tax and Use tax are companion taxes. If an item is used or consumed in Idaho, that is the action that is taxed. There is case law that supports the collection of the tax.

**John Watts**, Idaho Chambers of Commerce Alliance, spoke **in favor** of **H 581**. He said the approach should be from the fairness issue. Businesses are conducting business. Whether it is an internet business or storefront business, they should be treated the same.

**Shawn Barigar**, Twin Falls Chamber of Commerce, spoke **in favor** of **H 581**. He said this is a matter of fairness to Idaho brick and mortar businesses. He has heard from many members that they are at competitive disadvantage to out-of-state businesses. At a western saddle store in Twin Falls, people write down product information and then order online with free shipping and save the 6% sales tax. This legislation is a convenient and uniform way for all to pay their fair share. It is also a chance for the State to collect additional revenue.

**Wayne Hoffman**, Idaho Freedom Foundation, spoke **in opposition** to **H 581**. He said it does not help businesses but is a tax to their customers. The equity method is to lower taxes. He said the legislation takes \$35M out of the economy. That money can be used to buy goods or hire more employees. It is better if the money is in the economy, not in the government.

In response to Committee questions, **Mr. Hoffman** said the purpose of tax policy is to provide government services. Existing law requires all purchasers to pay Sales or Use tax. The debate is not about sales or use taxes, it is how to collect the taxes that are due. Right now it is collected at the point of sale. Purchasers on the internet hopefully pay on their tax return. It is a tax on consumption, not a tax on purchases. A consumer in the state and a retailer in the state both use the services of the State. If you buy something out of state, you did not use any government services. This is just a mechanism to gather more money for the State.

**Alex LaBeau**, Idaho Association of Commerce & Industry (IACI), spoke **in favor** of **H 581**. This was an extensive piece of legislation to coordinate. It protects our interests in the state. This will not be the last time this comes up; future legislation will make adjustments. In respect to services, the State of Idaho taxes 29 services. We have Use and Sales taxes. Idaho-located businesses request forward movement to streamline the process for ourselves and to put out-of-state and Idaho businesses on the same level. Sales and Use taxes are the law in the State of Idaho.

In response to Committee questions, **Mr. LaBeau** agreed that there are some concerns, but things will be adjusted as the legislation moves forward. There has never been a perfect piece of legislation. The current read is that the bill is satisfactory enough to move forward.

In response to Committee questions, **Rep. Nessel** said that the instruction to create this bill came from the Speaker.

**Karen Echeverria**, Idaho School Boards Association (ISBA), spoke **in favor** of **H 581**. She said the tax should already be collected.

**Christopher Rants**, Main Street Coalition, spoke **in favor** of **H 581**. He said the coalition includes companies from Amazon to telecom companies. This type of legislation has already passed in several different states. Recently, shop.org released a study that stated that one-third of Americans who carry a cell phone will make a purchase using that phone. Innovation and technology are outpacing tax law throughout country. We need to catch tax law up with technology. Today, it is a voluntary collection system. Over 1,800 retailers in 24 states collect sales tax and remit it back to the different states. This has created an undo burden on the seller. How would seller know what rate to charge, etc? The legislation is the answer. There is one set of definitions. This process is working in 24 states. Idaho would become the 25th state to participate. Online and non-online purchases are evenly split between consumers and corporations. Some businesses don't know

they are required to pay a Use tax. We need a better system than collection by audit. All states agree on the definitions. Legislators determine what is taxed. This is a smart, simple way to make sales collection work.

In response to Committee questions, **Mr. Rants** said the Marketplace Equity Act requires a simplified tax base. California has delayed implementation of this Act. There are five different pieces of legislation in front of Congress right now. All authorize a similar collection system. The service providers' software package relieves small businesses of the burden of knowing what taxes to collect. The California Legislature leaves the burden on a business to figure out what should be collected. California does not want any other state directing their process. They shouldn't be the model for the rest of the nation. This legislation looks out for small businesses.

**Mr. Rants** said the complexity of sales tax legislation puts an undo burden on the remote seller. The bill was created to simplify everything to one set of definitions, audits, rules, and forms. This was requested by the Idaho Supreme Court. In Idaho, the Certified Service Provider (CSP) would be paid on a sliding scale with a percentage of the new revenue collected. CSPs alleviate burdens on retailers.

Example: If a 60 cent tax were collected by the CSP, 59 cents would be sent to the State and 1 cent would go to the CSP. A large corporation with an in-state presence would not use the services of a CSP, but a small retailer would.

In response to an additional question, **Mr. Rants** stated that he represents the Main Street Fairness Coalition and he registered as a lobbyist on Monday.

**Pam Eaton**, Idaho Retailers Association, spoke **in favor** of **H 581**. She said this is a fairness issue and is a huge step in the right direction. Local people are asking for this legislation. By not having the legislation in place, we are pushing business and money out of state. The government loses money as do local businesses. Many IACI members have reviewed this bill. Not passing this bill does not let anyone know what changes will need to be made. All the bill does is standardize definitions. By design, the bill may require some changes in 2013.

In response to Committee questions, **Ms. Eaton** said that no group has tried to establish a main street leadership council. First they need to educate people about what it truly stands for. Some educational things have been done in the past. Historically, \$1 spent in a retail store actually adds \$3 to the economy. Lost taxes of \$35M is in essence \$583M in lost sales in our state. With the ripple effect - \$583M x \$3 is a large amount of money lost to the entire state.

**Scott Peterson**, Streamlined Sales Tax, spoke **in favor** of **H 581**. What creates the complexity of sales tax administration? Why does Idaho do the same thing Washington does, but just a bit differently? The retailers collect the taxes. Taxes are paid by the consumer and remitted by the seller. The retailers collect 99.9% of the taxes. Streamline sales tax is not about collecting tax, it's about taking things we all do and eliminating the burden of the differences. The Marketplace Equity Act is different from historical streamline sales tax legislation. Retailers like this legislation because everyone has to change. This makes sales tax administration easier for retailers. If there was a sales tax holiday such as some states have, all the mechanisms are in place in the bill to observe that.

In response to Committee questions, **Mr. Peterson** said the CSP is getting remuneration for collecting taxes for the state. The CSP files a tax return on behalf of the retailer and guarantees to the retailer that the information is correct. The Agreement conforms to terms that the industry uses so that there is a common understanding of what Idaho does. The section about "rounding up" is in the Agreement because of four states that go to the sixth decimal place and then "round up".

**Rep. Nasset** said that in 1965 the internet was not envisioned. The legislation brings taxes up-to-date and is fair.

**MOTION:**

**Rep. Burgoyne** made a motion to send **H 581** to the floor with a **DO PASS** recommendation.

During Committee discussion, the following comments were made: Computers have personal property taxes paid again and again. As far as the fairness discussion and the level playing field, remember that Idaho is one of a handful of states with a Grocery Tax credit. Many who advocate on a fairness level also want a local option tax, which is inconsistent. Nothing of great substance has come about by this bill. The bill is not perfect; that's why it doesn't take affect until 2013.

The legislation implies delegation of authority. The burden to Idaho businesses is a concern. More actions need to be taken by the State to avoid federal interference.

**SUBSTITUTE MOTION:**

**Rep. Bedke** made a substitution motion to **REFER H 581** to an interim task force.

Additional Committee discussion included the comments: Sales and Use tax equals a consumption tax. This system using a third-party looks to be the cheapest auditors the State will ever get. This committee needs to send a strong message to the rest of the House. What will an interim committee do? It will allay concerns that everyone has heard. This bill just reserves a seat at the table in 2013. Interim committee's rarely ever succeed. We need an actual bill that can be reviewed by the users.

We need to work on cutting spending, cutting taxes and downsizing government. That would solve most of the problems. The Ad Hoc committee had limited participation. The Tax Commission can preempt state law, others can do audits.

**AMENDED SUBSTITUTE MOTION:**

**Rep. Roberts** made an amended substitute motion to send **H 581** to the floor without recommendation.

Further committee discussion included the comments: This is tax that is due and payable to the State. There is some need to adjust tax code, which was developed 47 years ago. Under economic development, \$583M of annual sales, if \$35M fiscal note is correct, taking one-half of that and rolling it seven to nine times in the community, and in businesses that are located in Idaho means there would be more revenue brought in. The unconstitutional claim is wrong. The Office of the Attorney General has reviewed this and has provided a letter stating it is constitutional. There is no guarantee this will create jobs.

**VOTE ON AMENDED SUBSTITUTE MOTION:**

Roll call vote was requested on the amended substitute motion to send **H 581** to the floor without recommendation. **Motion failed by a vote of 8 AYE and 10 NAY.** Voting in favor of the motion: **Reps. Raybould, Roberts, Smith(24), Gibbs, Killen, Burgoyne, Rusche, Lake.** Voting in opposition to the motion: **Reps. Collins, Barrett, Moyle, Schaefer, Wood(35), Bedke, Harwood, Barbieri, Bayer, Ellsworth.**

**VOTE ON SUBSTITUTE MOTION:**

Roll call vote was requested on the substitute motion to refer **H 581** to an interim task force. **Motion failed by a vote of 9 AYE and 9 NAY.** Voting in favor of the motion: **Reps. Barrett, Moyle, Schaefer, Wood(35), Bedke, Harwood, Barbieri, Bayer, Ellsworth.** Voting in opposition to the motion: **Reps. Collins, Raybould, Roberts, Smith(24), Gibbs, Killen, Burgoyne, Rusche, Lake.**

**VOTE ON ORIGINAL MOTION:**

Roll call vote was requested on the original motion to send **H 581** to the floor with a **DO PASS** recommendation. **Motion failed by a vote of 9 AYE and 9 NAY.** **Voting in favor** of the motion: **Reps. Collins, Raybould, Roberts, Smith(24), Gibbs, Killen, Burgoyne, Rusche, Lake.** **Voting in opposition** to the motion: **Reps. Barrett, Moyle, Schaefer, Wood(35), Bedke, Harwood, Barbieri, Bayer, Ellsworth.**

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 11:02 am.

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Representative Lake  
Chair

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Janet Failing  
Secretary